

1 UNITED STATES DISTRICT COURT
 2 FOR THE SOUTHERN DISTRICT OF TEXAS
 3 CORPUS CHRISTI DIVISION

4 ALLISON STEWART,)
 5 Individually and as)
 6 Representative of the)
 7 ESTATE OF TROY STEWART,)
 8 STEPHANIE STEWART, AND)
 9 NATASHA STEWART)

10 Plaintiff(s))

11 VS.)

12 C.A. NO. 2:12-cv-207

13 CITY OF CORPUS CHRISTI,)
 14 TEXAS; MIKE WERTANEN,)
 15 Individually, and)
 16 BRANDON CORDELL,)
 17 Individually)

18 Defendant(s))

19 *****

20 ORAL DEPOSITION OF

21 BRANDON CORDELL

22 APRIL 11, 2013

23 *****

24 ORAL DEPOSITION OF BRANDON CORDELL, produced as a
 25 witness at the instance of the Plaintiff, and duly sworn,
 was taken in the above-styled and numbered cause on APRIL
 11, 2013, from 9:23 a.m. to 11:23 a.m., before MARCY A.
 WELLS, CSR in and for the State of Texas, reported by
 machine shorthand, at the offices of Hilliard, Munoz &
 Gonzales, 719 S. Shoreline, Suite 500, Corpus Christi,
 Texas, pursuant to the Federal Rules of Civil Procedure.

1 MS. GARZA: Objection, form.

2 A I can't answer that. I mean, with his
3 demeanor, there's no way I can answer that.

4 Q Well, I mean, I'm assuming that part of your
5 regular TCLEOSE training, that you've been trained to
6 identify intoxicated individuals, correct?

7 A Yes, sir.

8 Q Slurred speech, staggered walk, red eyes,
9 all those sorts of things, correct?

10 A Yes, sir.

11 Q Did you see any identifying markers on this
12 particular individual that would tell you that he was
13 intoxicated as opposed to something else?

14 A He was catatonic. I mean, if you were to
15 say -- if I were to look at him straight up, I would think
16 he was intoxicated, yellow eyes, red eyes, staring
17 straightforward and not responding to anything, just
18 slouched over, you know, it looked like someone that was
19 highly intoxicated.

20 Q I'm not trying to trick you, but when you
21 arrived and you see him, in your mind, did you think,
22 "This guy is drunk"?

23 A I don't recall thinking that or anything
24 like that.

25 Q I mean, as you all were standing there, I'm

1 I.V. on his arm.

2 Q Okay.

3 A Can we --

4 Q Yeah, if you want to take a break.

5 (A BRIEF RECESS WAS TAKEN.)

6 Q (By Mr. Gale) We were talking -- You were
7 in there, you were listening to EMS talking. At some
8 point, they started to put an I.V. or they were about to
9 do an I.V. At that point, kind of tell me, in the room,
10 where was Mr. Stewart, like where was he sitting?

11 A Sitting on the couch, more to the left of --
12 his right, my left of the couch.

13 Q Okay. Had he -- To this point, had you
14 heard him verbalize anything?

15 A No, sir. He sat there, leaning forward at
16 the edge of the couch. He stared straight ahead. He had
17 a little bit of foam coming out of his mouth, some kind of
18 reddish pink, not a lot at that time. Foam -- His eyes --
19 The best way for me to describe it, almost like jaundice,
20 real yellow. He stared straight ahead. He never turned,
21 made any eye contact with anybody, never responded to
22 anybody, to the family, to anybody asking him questions.
23 He had no response whatsoever. He was just sitting there.

24 Q What kind of things at that point were the
25 family saying to him? Do you remember?

1 guy?

2 A Yes, sir.

3 Q When this guy is putting the blue band on
4 his arm, what happens?

5 A Mr. Nichols, at that time --

6 Q Who?

7 A Troy.

8 Q Mr. Stewart?

9 A Mr. Stewart. I'm sorry. I'm sorry. Mr.
10 Stewart, at first, it didn't bother him. It seemed like
11 he was just sitting there and he was putting it on, and
12 then he started swatting at it. He still never moved his
13 head. He still was very still, looking straight ahead,
14 never tried to make any kind of eye contact, never
15 verbalized, never said anything, but he started swatting
16 and hitting, like he didn't like the blue thing on him.

17 Q I mean, like he was swatting like he was
18 irritated?

19 A Like he was trying to get it off, like he
20 was trying to knock it off.

21 Q And by a blue band, are you talking about
22 like a tourniquet type?

23 A Yes, sir. Like the rubber band tourniquet
24 they usually put on to get a vein going for an I.V.

25 Q At that time, was Mr. Stewart trying to hit

1 anybody or, you know, anything like that or just trying to
2 swat the --

3 A Shortly after that, he did.

4 Q So, you're saying he was swatting at this
5 blue band. He's, kind of, trying to get it off, but he's
6 not even really even looking to what he's touching?

7 A Yes, sir. He never looked left or right.

8 Q Does he accomplish getting off the band?

9 A I don't know if he knocked it off or if the
10 medic just, kind of, took it off. I can't answer that
11 question.

12 Q When he was trying to swat the band, did
13 anybody grab his right arm to prevent him from doing that?

14 A I can't answer that. I don't know.

15 Q Well, I mean, as you were sitting and
16 watching him and he's trying to take off this band or swat
17 at it, however you want to describe it, does anybody,
18 including his family, grab his right arm and say, "Hey,
19 don't do that, put it down"?

20 A I can't answer that. I don't know.

21 Q Okay. So, he's swatting at this thing.
22 What happens?

23 A Well, when it finally came off, I believe
24 the medic went to put his hands on him, and that's when I
25 heard them calling him Troy, and the family calling him

1 Troy, "Troy, calm down," you know, "We're just here to
2 help you," and that's where I learned his name, Troy, then
3 continuing to say Troy, and one of the medics was at his
4 left, asking him to calm down, and that's when he started
5 swinging, and I don't if he hit one of them. I heard that
6 yes, he did hit one of them and he didn't hit one of them.
7 I don't know for sure on that, but when he started
8 swinging, he was still doing the same thing, still
9 straight ahead, still never made contact, still never
10 verbalized, was moaning, but flailing his arms around,
11 swinging, and one of the medics said that he did hit them,
12 but, like I said, I didn't see it and I don't know for
13 sure.

14 Q And when did you hear or who was it that
15 told you one of the medics was hit?

16 A One of the medics that were there. I
17 couldn't tell you who it was.

18 Q Did they tell you there that they got hit?

19 A Yes, sir.

20 Q Did you see anybody get hit?

21 A No, sir.

22 Q Did you see anybody from the family getting
23 hit?

24 A No, sir.

25 Q This swinging of the arms, the flailing that

1 you've described, did it seem to be something that was
2 intentional in nature, trying to hurt somebody?

3 A No, sir.

4 Q Or did it seem to be almost like the
5 swatting, which is an involuntary "get off of me" sort of
6 thing?

7 A Yes, sir. It's like he didn't --

8 Q I mean, is that a fair --

9 A Yes, sir.

10 Q -- depiction?

11 A Yes, sir.

12 Q Okay. And you said he was moaning?

13 A Yes, sir.

14 Q What was he moaning? Was he moaning a
15 particular word, phrase?

16 A No.

17 Q Or anything?

18 A Just a moan.

19 Q Sort of like a low constant --

20 A Not constant, but it was off and on, just a
21 moan.

22 Q Did you ever, during this time period, did
23 you hear him attempt to say anything?

24 A No, sir.

25 Q And as far as the foaming on his mouth, was

1 Q Okay. At that point, did you talk to any of
2 the family members?

3 A At that point, I had not. There was no way
4 for me to get across the living room through all the
5 people to figure out what was going on. My main concern
6 was to let them get him his help.

7 Q At this point that we're talking about,
8 where is Wertanen?

9 A He's not arrived yet.

10 Q So, at that point, have either you or EMS
11 personnel tried to get the family's assistance just to
12 calm Troy down?

13 A They were there talking to him during the
14 time, you know, "Daddy, calm down, Troy, calm down," I was
15 hearing, "Just let them help you, they're just here to
16 help you."

17 Q Okay. And so then what happens?

18 A At what time.

19 Q Right then. You're standing there. The EMS
20 personnel look at you, give you that inquisitive look
21 like, "What are you going to do?" What do you do?

22 A I walk over to Troy. He was still sitting
23 the exact same way, still had the same stare and moaning,
24 and I just walk up to him and put my right hand on the
25 back of his shoulder and just began patting him, "Troy."

1 I had my left hand in front, just down like this. I was
2 not touching him on the arm or hand. I just was keeping
3 my hand kind of there, just in case he swung up, but I
4 wasn't --

5 Q Did he?

6 A No. Not at first. At this point, I just
7 had my hand there just in case he wanted to flail or swing
8 up at me, so I could block it, and I just sit there and
9 patted him on the back, you know, "Troy, calm down, we're
10 here to help you, let the medics do their job." I still
11 got no response. He was still -- had the exact same
12 stare, and I don't even recall seeing him blinking, just
13 staring straight ahead. He wasn't communicating with his
14 family, the medics, the police, anybody.

15 Q Okay. And you said you walked over to him.
16 Did you have to walk over anybody or around anybody, or
17 did you just walk straight to him?

18 A I just had to walk around. There was a
19 glass table in the middle and I was standing, so I had to
20 walk around the glass table where the medics backed up and
21 just kind of between them to him, and when I did that,
22 they all stood back. Hopefully, now I can calm him down.

23 Q Now, at the point where you walked over to
24 Troy, had, at that point, the medics already stepped back
25 or did you walk forward first and then they stepped back,

1 or what happened?

2 A No. They had already stepped back.

3 Q So, when they stepped back, where were the
4 EMS personnel standing, just like where you were before, I
5 guess?

6 A I guess. I can't answer. I wasn't paying
7 attention to what they were doing behind me.

8 Q Did the EMS personnel tell you anything
9 about what they needed assistance with or what they wanted
10 you to do?

11 A I believe one of them told me, "We need to
12 get him calmed down so we can get the I.V. in him."

13 Q So, you put your hand on his right shoulder,
14 another hand kind of holding his left elbow?

15 A No. The other hand was not touching him at
16 all.

17 Q So you had the other hand near his left
18 elbow, just in case he swung at you?

19 A Yes, sir.

20 Q And, at that point, did he swing at you, or
21 did he continue just to look forward?

22 A Well, it took a few seconds, after a few
23 seconds of standing there padding him. Then he swung up
24 like that. He swung up like he wanted to stand up. He
25 had his hands on his knees with his elbows kind of

1 back, he was still in the same position he was most of the
2 time, with his hands like that (indicating), and I was
3 just patting him on the back, and then he leaned forward
4 and then he just kind of came up on me and I kind of
5 caught his arm. Not in a motion to like he was trying to
6 strike me, but he just came up on me. So I kind of
7 stopped his arm and I said, "No, Troy, just sit down here
8 on the couch, sit on the couch." And, at that point, I do
9 remember the mother and daughter, because they were
10 standing at that time to Troy's right, my left, "Dad, just
11 listen to them, honey, listen to them, let them help you,
12 they're here to help you, do what they say, just listen to
13 them," and he still never responded to them.

14 Q Okay. So when he went forward and tried to
15 stand up, what happened? Did you sit him back down?

16 A The first time, yeah, I just sat him back
17 down.

18 Q And how much -- You said it didn't take
19 much pressure to keep him down?

20 A No. It almost -- At that point, he was
21 almost leaning forward to stand up, and when he brought
22 his hand up to me and I caught it and put it back, he
23 just, kind of, sat back. There was no physical like
24 nothing aggressive at all. I just -- When I put my arm
25 across him, he kind of sat back down.

1 other words, "What's going on with him?"

2 A No, sir.

3 Q And up to that point, apart from knowing
4 that something was off the charts, did you know anything
5 else regarding his medical condition?

6 A No. I knew that -- I had heard him saying
7 his blood sugar. I heard him -- At that point, I'd heard
8 him -- I don't know when exactly now, but I knew that they
9 were talking about his blood, because the -- I guess the
10 engine company medics were explaining what was going on to
11 the ambulance medics.

12 Q While you were standing back?

13 A While I was over there with him and
14 everything during that whole time and talking about his
15 blood sugars off the charts. I remember hearing that
16 distinctly, "His blood sugars are off the charts."

17 Q What is the CCPD policy in regards to a
18 citizen who refuses medical treatment? In other words,
19 can EMS or CCPD force medical treatment on persons?

20 A I can't answer that.

21 Q I mean, have you ever trained in regards to
22 under what circumstances either CCPD or EMS is allowed to
23 force medical treatment upon somebody?

24 A I can't answer that. I'd have to go over
25 the rules manually.

1 pushing up just to keep him on the ground. We're still
2 asking the medics.

3 Q Did this hug seem to be some sort of
4 restraint technique that you all learned?

5 A I mean, yeah. You could use it as a
6 restraint technique, you know, similar to the ones we've
7 learned, keeping people on the ground, keeping people
8 down, restraining them to the ground.

9 Q And why were you trying to keep him on the
10 ground?

11 A Because it was the safest place for him to
12 be.

13 Q Okay. So, this time period that we're
14 talking about, from where he's placed on the ground until
15 he's trying to do the push-ups and you all are keeping him
16 on the ground, how much time are we talking about
17 elapsing?

18 A That would be a total guess, I mean.

19 Q About two minutes, five minutes, what?

20 A It would be a total guess, but from the time
21 when he went to the ground?

22 Q Correct.

23 A We're talking about 20, 30 seconds, and
24 that's a guess. A very short amount of time.

25 Q And you said, at some point, Wertanen is

1 hugging him, he's saying "no biting," you've got the left
2 arm?

3 A Not at this time, I did not.

4 Q Or you let go?

5 MR. DEKOCH: Objection, form, misstates
6 the testimony.

7 Q I mean, at some point, you said you decided
8 you all better handcuff him; is that correct?

9 A Yes.

10 Q Did you actually verbalize that or just
11 something that was running through your head?

12 A No. We verbalized it.

13 Q And who verbalized it?

14 A Officer Wertanen said, you know,
15 I think we need to put him in handcuffs, it would be
16 easier on him, less stressful." And, so, at that time, I
17 pulled his left arm behind his back and Officer Wertanen
18 pulled his right arm behind his back. I pulled my
19 handcuffs out, handcuffed him, and as soon as I handcuffed
20 him, Officer Wertanen said, verbalized out loud, "Let's
21 get off of him so he can breathe, let's get off of him so
22 he can breathe." I got off of him back between his legs
23 again, straddling his legs and so he wouldn't kick and, at
24 first, we got exactly -- you know, we got basically the
25 goal that we wanted. There was no more fighting in him.

1 He wasn't swinging. He was still moaning. He was still
2 breathing, but he wasn't trying to push up, the strain,
3 and we can get off of him. There was no more struggle,
4 and that's what we were going for.

5 Q How many times did he attempt to get himself
6 off the ground?

7 A Oh, he continued to do that from the time he
8 got on the ground.

9 Q How many times was that?

10 A Like I said, we were there 15, 20 seconds
11 before we handcuffed him. The entire time, he was
12 struggling.

13 Q So, during that 15, 20 seconds, how many
14 times do you think he tried to lift himself off the ground
15 and you all had to keep him down?

16 A I don't know.

17 Q I mean, is it more than one?

18 A Yes.

19 Q Was it more than, let's say, five?

20 A Yes.

21 MR. DEKOCH: Chris, can we take a break
22 for just a quick second?

23 MR. GALE: Yes. No problem.

24 (A BRIEF RECESS WAS TAKEN.)

25 Q (By Mr. Gale) You and Wertanen put the

1 handcuffs on him. Did you put them in front of his body
2 or behind his body?

3 A Behind.

4 Q Okay. And in order to do that, did you have
5 to pull his arms back?

6 A Yes, sir.

7 Q And how much force did that take?

8 A For me, not much. I just pulled his left
9 arm back around.

10 Q And did it appear that Wertanen had any
11 problems pulling his right arm around?

12 A Not that I know.

13 Q You're still on his left?

14 A I'm still on the left side.

15 Q And Wertanen pulls his right. You all, I'm
16 assuming, met at the same time and behind him, put the
17 handcuffs on?

18 A The hard part was that he was such a big
19 guy. It was getting the handcuffs, getting the hands to
20 reach.

21 Q And as far as CCPD goes, are there ever any
22 circumstances where you'll use double handcuffs; in other
23 words, looking the handcuffs with each other?

24 A Yes, sir.

25 Q And in what circumstances would you do that?

1 all said, "No. Leave him like that. He's okay like that.
2 Just leave him alone." We're totally off of him. We're
3 not putting any pressure on him, he's calming down, we're
4 thinking.

5 Q And, at this point, is he still in
6 handcuffs?

7 A Yes, sir.

8 Q Does anybody ever remove the handcuffs?

9 A Not at that point.

10 Q When do they remove the handcuffs.

11 A A few seconds after that. I'm still patting
12 him on the back. I remember feeling Troy have like almost
13 like tighten up, like spasm, and I looked at Officer
14 Wertanen and Office Wertanen said, "He's not breathing. I
15 don't believe he's breathing," and I looked up and was
16 saying the same thing, "I don't think he's breathing."
17 They say, "Take the cuffs off him." So, I believe it was
18 Officer Wertanen that undid the first handcuff off. They
19 finally got that table out of the way. We rolled him over
20 and they started going down to work on him. One of the
21 medics had his left arm -- I believe it was his left
22 arm -- and was asking, "Can you get the other?" Because
23 we didn't take time to take both handcuffs off. We just
24 wanted one off so we could roll him over. They said, "Can
25 you get this other one?" I walked over. I took off that

1 handcuff and we got back and let them do their work.

2 Q At any point during the time that you
3 were -- you and Wertanen were laying down or on top of
4 him, or doing whatever on the ground, did you ever get the
5 idea that maybe Troy had broken a bone, something had
6 popped, anything of that nature?

7 A Me? No.

8 Q In preparation for this deposition, did you
9 have an opportunity to review anybody else's statements?

10 A No, sir.

11 Q And that would include Wertanen?

12 A Yes, sir.

13 Q Did you ever see, during the time period
14 that you were on the ground, what might be the use of
15 what's called a Kimura? Do you know what that is?

16 A Yes, sir.

17 Q Can you describe for me what a Kimura is, to
18 your knowledge?

19 A Basically, it's a wrist arm hold to gain
20 control of the person's arm, pull it behind their back.

21 Q Did you have to use a Kimura to gain control
22 over Troy's arm?

23 A No. I used a similar technique, but I
24 couldn't call it a Kimura, no. It's a technique we were
25 trained to use in the academy.

1 Q And what would be the factual reason why you
2 would use the technician you did as opposed to like a
3 Kimura you had?

4 A Well, he was trained in one way and I was
5 trained in another way.

6 Q And Kimura, what is it useful for, I mean?

7 A To gain control of the person's arm to get
8 it behind their back where they really can't fight back
9 and pull back. It's the same thing I use without the
10 wrist lock, without grabbing the wrist with both hands. I
11 can use the same thing with one hand with one arm.

12 Q And what is it about a Kimura that allows
13 one to gain control and fight pressure?

14 MR. DEKOCH: Objection, form, calls for
15 speculation.

16 Q I mean, what is it about it --

17 A Leverage.

18 Q Okay. And what kind of leverage is actually
19 used during the Kimura? What part of the body has
20 pressure on it, I suppose?

21 A The arm.

22 Q And do you know if Troy broke anything
23 during the time period that we've talked about so far
24 where he's going down to the ground and on the ground.

25 A No. All I know is that Officer Wertanen,

1 later, after the incident, like not that day, said that he
2 thought he heard a pop when he pulled his arm back.

3 Q And when you were talking to Wertanen
4 regarding this, where were you all?

5 A I think it was when we were being
6 interviewed with CID -- or no. It was when we were doing
7 our interview with our attorney, Celeste.

8 Q Did you and Wertanen both have the same
9 attorney?

10 A Yes, sir.

11 Q Have you ever spoken to Wertanen -- Let's
12 say in the last year, have you talked to Wertanen?

13 A Yes, sir.

14 Q Have you spoken about this incident?

15 A Not -- Other than when we went to the
16 psychologist to be cleared to go back to work, we really
17 never discussed the incident, other than, you know,
18 asking, "Have you heard anything from the attorneys, do
19 you know what's going on?"

20 Q Just basic procedural stuff?

21 A Yes. You know, what's happening.

22 Q When you all went to see the psychologist to
23 be cleared, or the psychiatrist, whichever it was, were
24 you all in there together?

25 A Yes.

1 an ear piece, and I didn't want to say it in front of the
2 family to upset them, so I stepped outside. I knew they
3 couldn't hear it through his ear piece. When I went to
4 step outside is when I noticed the other two officers were
5 standing on the front porch. They arrived.

6 Q And during the time period you were in
7 there, did Troy ever urinate himself?

8 A Yes, sir.

9 Q And when did you notice that?

10 A Shortly after he was on the ground.

11 Q So, during the time period that you all were
12 holding him or preventing him from lifting himself up?

13 A Yes, sir.

14 Q Do you remember, during those seconds, when
15 you were saying that he tried to lift up several times,
16 was it on the first one, second one, toward the end?

17 A I don't recall when he did it.

18 Q Did you ever have your foot or knee on any
19 of Troy's legs?

20 A No, not putting down pressure on his leg,
21 no, sir.

22 Q Did you ever have your foot or knee on the
23 legs, though?

24 A Over. Not on. I never held him down by his
25 foot or leg. I put basically like almost -- like if this

1 him just trying to keep him down, while I was trying to
2 keep him from kicking everywhere, keeping his legs from
3 kicking.

4 Q So, while Wertanen was hugging Troy, he was
5 in contact with him, correct? I mean, his body was on his
6 body?

7 A Yes.

8 Q And Wertanen was using his weight to keep
9 Troy down?

10 A You would have to -- I don't --

11 Q I'm asking. Did it appear that he was using
12 his weight to keep him down?

13 A Sure. Yes.

14 Q I think that maybe your video statement said
15 that when you were holding him down, the pressure was
16 enough for basically to keep a two year old when you were
17 trying to keep him on the couch; is that correct?

18 A Yes. On the couch. Yes. Not on the
19 ground.

20 Q So, it's my understanding you didn't have to
21 use a lot of effort to keep him from being able to --

22 A Well, I didn't use a lot of effort.

23 Q What's the difference between what you just
24 said and what I said?

25 A Well, you said -- the way you made it sound